

**MASTER AGREEMENT FOR MARKETING CONSULTANT SERVICES
BETWEEN
THE CITY OF SAN JOSE
AND
JAMES T. BARNES, JR. DBA
BARNESTORMING ADVERTISING & MARKETING COMMUNICATIONS**

THIS AGREEMENT is made and entered into this ____ day of _____ 2011, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and JAMES T. BARNES, JR. DBA BARNESTORMING ADVERTISING & MARKETING COMMUNICATIONS ("CONSULTANT").

RECITALS

The purpose for which this AGREEMENT is made, and all pertinent recitals, is listed on EXHIBIT A, entitled "RECITALS", which is attached hereto and incorporated herein.

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES.

CONSULTANT shall perform those services specified in detail in EXHIBIT B, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

A. Initial Term

The initial term of this AGREEMENT shall be from July 1, 2011, to June 30, 2013, inclusive, subject to the provisions of Subsections 2 B, C and SECTION 12 of this AGREEMENT.

B. Options

The City Manager may extend the initial term of the AGREEMENT in one-year increments up to a maximum of two (2) one-year periods ("Option Period"). The City Manager shall exercise the Option by written Notice of Exercise of Option in the form set forth in EXHIBIT G at least thirty (30) days prior to the expiration of this AGREEMENT or the expiration of the Option Period, whichever is applicable. All terms and conditions of this AGREEMENT shall remain in full force and effect during the Option Period.

C. Appropriation of Funds

CITY's funding of this AGREEMENT shall be on a fiscal year basis (July 1 to June 30) and is subject to annual appropriations. CITY's exercise of any option to extend is contingent upon appropriation of funds by the CITY.

SECTION 3. SCHEDULE OF PERFORMANCE.

The services of CONSULTANT are to be completed according to the schedule set out in each Service Order issued pursuant to EXHIBIT B, Section V. Time is of the essence in this AGREEMENT.

SECTION 4. COMPENSATION.

The compensation to be paid to CONSULTANT, including payment for professional services and reimbursable expenses, shall not exceed Five Hundred Twenty Thousand Dollars (\$520,000) for the initial term of the AGREEMENT. The total maximum compensation, including payment for professional services and reimbursable expenses for the initial term of the AGREEMENT and the two (2) one-year Option Periods (July 1, 2011 – June 30, 2015) shall not exceed One Million Forty Thousand Dollars (\$1,040,000). The rate and schedule of payment is set out in EXHIBIT D, entitled "COMPENSATION," which is attached hereto and incorporated herein.

SECTION 5. METHOD OF PAYMENT.

Each month, CONSULTANT shall furnish to the CITY a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures.

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that CONSULTANT, in the performance of the work and services agreed to be performed by CONSULTANT, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and CONSULTANT hereby expressly waives any claim they may have to any such rights.

SECTION 7. ASSIGNABILITY.

The parties agree that the expertise and experience of CONSULTANT are material considerations for this AGREEMENT. CONSULTANT shall not assign or transfer any interest in this AGREEMENT nor the performance of any of CONSULTANT's

obligations hereunder, without the prior written consent of CITY, and any attempt by CONSULTANT to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. SUBCONSULTANTS.

- A. Notwithstanding SECTION 7 above, CONSULTANT may use subconsultant(s) in performing work under this AGREEMENT. Each subconsultant must be approved by the DIRECTOR prior to commencing any work under this AGREEMENT.
- B. CONSULTANT shall be responsible for directing the work of the subconsultant(s) and for any compensation due to subconsultant(s). CITY assumes no responsibility whatsoever concerning such compensation.
- C. CONSULTANT shall change or add subconsultants only with the written approval of the DIRECTOR.

SECTION 9. INDEMNIFICATION.

CONSULTANT shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by CONSULTANT's officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification.

SECTION 10. INSURANCE REQUIREMENTS.

CONSULTANT agrees to have and maintain the policies set forth in EXHIBIT E, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager) of the City of San Jose as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. CONSULTANT agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 11. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity,

disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 12. TERMINATION.

- A. CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days written notice of termination.
- B. If CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT immediately upon written notice to CONSULTANT.
- C. CITY's Director of Aviation ("DIRECTOR") is empowered to terminate this AGREEMENT on behalf of the CITY.
- D. In the event of termination, CONSULTANT shall deliver to CITY copies of all reports, documents, and other work performed by CONSULTANT under this AGREEMENT, and upon receipt thereof, CITY shall pay CONSULTANT for services performed and reimbursable expenses incurred to the date of termination.

SECTION 13. GOVERNING LAW.

CITY and CONSULTANT agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 14. COMPLIANCE WITH LAWS.

CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

SECTION 15. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for CONSULTANT in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.

SECTION 16. OWNERSHIP OF MATERIALS.

All reports, document or other materials developed or discovered by CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the

services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use. Without limitation of the foregoing general provision regarding ownership of materials, upon the expiration or earlier termination of this AGREEMENT, CONSULTANT shall return to CITY all finished camera ready art, electronic files, photographs, film and line art developed and/or produced by CONSULTANT under this AGREEMENT.

SECTION 17. WAIVER.

CONSULTANT agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONSULTANT shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 18. CONSULTANT'S BOOKS AND RECORDS.

- A. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONSULTANT pursuant to this AGREEMENT.
- B. CONSULTANT shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.
- C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.
- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents

shall be granted to any party authorized by CONSULTANT, CONSULTANT's representative, or CONSULTANT's successor(s)-in-interest.

SECTION 19. **CONFLICT OF INTEREST.**

CONSULTANT shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT.

SECTION 20. **GIFTS.**

- A. CONSULTANT is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 or the San Jose Municipal Code.
- B. CONSULTANT agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by CONSULTANT. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 12 of this AGREEMENT.

SECTION 21. **DISQUALIFICATION OF FORMER EMPLOYEES.**

CONSULTANT is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance"). CONSULTANT shall not utilize either directly or indirectly any officer, employee, or agent of CONSULTANT to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 22. **SPECIAL PROVISIONS.**

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT H, entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

SECTION 23. **NOTICES.**

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY: Norman Y. Mineta San Jose International
 Airport
 Vicki Day
 Director of Customer Services
 1701 Airport Boulevard, Suite B-1130
 San Jose, CA 95110-1206

To CONSULTANT: Barnestorming Advertising & Marketing
 Communications
 Jim Barnes
 718 University Avenue, Suite 214
 Los Gatos, CA 95032

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 24. **VENUE.**

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 25. **ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY:**

CONSULTANT agrees that, in the performance of this AGREEMENT, CONSULTANT shall perform its obligations under the AGREEMENT in conformance with City Council Policy 4-6, Environmentally Preferable Procurement Policy. A description for environmentally preferable procurement and the Policy can be found on the City's website at the following link: <http://www.sanjoseca.gov/esd/natural-energy-resources/epp.htm>.

Environmental procurement policies and activities related to the completion of work will include wherever practicable, but are not limited to:

- A. Use of recycled and/or recyclable products in daily operations. (i.e. 30, 50, 100% PCW paper, chlorine process free; triclosan free hand cleaner, etc.)
- B. Use of Energy Star Compliant equipment.
- C. Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.)

- D. Internal waste reduction and reuse protocol(s).
- E. Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products, etc.

SECTION 26. PRIOR AGREEMENTS AND AMENDMENTS.

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be modified only by a written amendment duly executed by the parties to this AGREEMENT.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal
Corporation

KEVIN FISHER
Sr. Deputy City Attorney

By _____
DENNIS D. HAWKINS, CMC
City Clerk

“CONSULTANT”

JAMES T. BARNES, JR. DBA
BARNESTORMING ADVERTISING &
MARKETING COMMUNICATIONS

By _____
JIM T. BARNES, JR.
Owner

EXHIBIT A

RECITALS

WHEREAS, the CITY OF SAN JOSE desires to obtain consultant services to assist the Norman Y. Mineta San Jose International Airport ("Airport") with a broad range of marketing and communications services and support for the Airport's air service development, customer services, internal and external communications, community and business outreach, special events, partner collaborations, and revenue-generating programs; and

WHEREAS, JAMES T. BARNES, JR. DBA BARNESTORMING ADVERTISING & MARKETING COMMUNICATIONS has the necessary professional expertise and skill to perform such services;

NOW, THEREFORE, the purpose of this AGREEMENT is to retain JAMES T. BARNES, JR. DBA BARNESTORMING ADVERTISING & MARKETING COMMUNICATIONS, as CONSULTANT to CITY to perform those services specified in SECTION 1 of this AGREEMENT.

EXHIBIT B
SCOPE OF SERVICES

The following Scope of Services are tasks that CONSULTANT shall complete for the Airport.

I. MARKETING PROGRAM DEVELOPMENT

- A. Develop long-term and short-term marketing plans in concert with Airport staff to support strategic air service development; aviation industry communications; customer services; community and business outreach; collaborative programs with Airport airlines and tenants; and revenue-generating programs.
- B. Identify appropriate communications channels, using traditional and non-traditional media as well as social media and on-line channels, for marketing strategies and tactics to meet rapidly changing conditions and needs of the Airport, aviation industry, and the public.
- C. Develop cost-effective and innovative marketing and communications tactics and campaigns and budgets to reach specific target audiences and to meet specific program objectives.
- D. Identify opportunities for marketing partnerships and collaborative campaigns to meet mutual goals of the Airport and partners.

II. PLANNING, RESEARCH, AND PERFORMANCE EVALUATION

- A. Assess current Airport and related community marketing efforts to identify opportunities for new programs and methods, areas for improvement, and ways to use limited resources effectively to achieve Airport goals.
- B. Recommend and direct primary research and provide Airport staff with relevant secondary research to regularly inform the development, implementation, and evaluation of the Airport's marketing and communications programs, channels, and campaigns.
- C. Work with Airport and other City staff and consultants, and relevant community and business organizations as appropriate, to develop practical Airport marketing and communications work plans.
- D. Assist staff in developing performance measures for evaluating the Airport's marketing and communication efforts.

III. MARKETING SERVICES SUPPORT

- A. Provide creative input and design consultation and assistance to Airport staff in connection with the production of advertising for on-line, television and radio, print, outdoor, and other media; advertising deliverables suitable for specific channels and audiences; and other informational materials.
- B. Provide marketing and communications services, including: conceptual and creative development, copywriting, social media planning and implementation, illustration, photography, art direction, graphic design and production, television and radio production, audio and video production, website design, mobile marketing, and media planning and buying services.
- C. Translate and produce advertising and collateral material as directed into designated foreign languages, Braille and/or media compatible for the hearing- and sight-impaired as might be required.
- D. Plan and prepare presentations and collateral material for airlines, public, news media, civic officials, business community, neighborhood associations, Airport partners and tenants, and other specific audiences.
- E. Provide marketing and communications support for Airport special events as necessary.

IV. CONSULTATION

- A. Provide guidance to the Airport in selecting providers of marketing, communications, and advertising services such as graphic production, social media, web services, advertising channels and materials, and audio/video production. Such consultation and assistance may include drafting and providing advice regarding specific scopes of services and reviewing and advising the City and Airport regarding provider qualifications.
- B. Provide guidance for providers of marketing and advertising services to the Airport, and ensure that such advertising services are provided in a manner consistent with the Airport's goals and standards and coordinated with other communications activities.
- C. Assist the Airport in identifying potential opportunities for marketing and advertising with private and public-sector partners in connection with the Airport's efforts to reach specific target audiences, reduce outreach cost, and/or generate revenues.

V. SERVICE ORDERS

CONSULTANT shall perform work under this AGREEMENT only pursuant to an approved service order. Each approved service order will detail the nature of the work CONSULTANT will perform, the time limit within which CONSULTANT will complete such work and the compensation for such work. Any work performed by CONSULTANT not pursuant to an approved service order shall be at no cost to the CITY.

The DIRECTOR will request CONSULTANT to propose a detailed scope of work, schedule of performance, budget, and special provisions, if any. CONSULTANT shall submit the draft service order to the CITY's project manager ("Project Manager") in both paper and electronic format. To facilitate the CONSULTANT's preparation of the proposal, the CONSULTANT and Project Manager may discuss, as they determine is appropriate, the various terms and conditions to be included in the proposal.

The Project Manager will review and comment on the proposal submitted by the CONSULTANT. The Project Manager and CONSULTANT shall agree on the final terms of the service order, and a final service order shall be prepared for the necessary approvals.

A service order is "approved" if it bears the signature of the DIRECTOR, or his designee, and CONSULTANT. The CONSULTANT shall begin work under a service order only after the service order has been approved in writing by CITY.

Each approved service order incorporates the terms and conditions of this AGREEMENT and becomes a part of this AGREEMENT. The terms and conditions of this AGREEMENT control over any conflicting terms and conditions contained in any service order. To maintain schedules and deadline, CONSULTANT shall provide regular project updates and status reports to Airport staff.

The DIRECTOR reserves the right to modify, reject, cancel, or stop any and all plans, projects, programs, schedules or work in progress and in such event, CONSULTANT shall immediately take proper steps to carry out the DIRECTOR's instructions.

EXHIBIT C

SCHEDULE OF PERFORMANCE

Work shall be initiated on an as-needed basis at the request of the DIRECTOR, and work shall be prosecuted pursuant to details defined in each specific Service Order, as provided in the Scope of Services, Exhibit B, Section V.

EXHIBIT D
COMPENSATION

CITY agrees to compensate CONSULTANT for professional services and reimbursable expenses based on monthly invoices submitted by CONSULTANT. Professional services will be billed at the hourly rates set forth below.

Professional Services

Jim Barnes	\$230/hour
Craig Elliott	\$175/hour
Usok Choe	\$150/hour
Patty Cimlox Zahares	\$100/hour
Sharon Wicks	\$100/hour
On-demand associates	Not to exceed \$150/hour

Reimbursable Expenses

Reimbursable expenses, reproduction of printed materials and other direct costs shall be billed to CITY by CONSULTANT at actual cost. All reimbursable expenses must be presented with documentation. Eligible reimbursable expenses are as follows: Travel expenses including coach airfare, hotel, car rental, per diem meals, message and overnight delivery charges, printing costs, and costs directly related to production.

Subconsultants

The costs for all subconsultants used by CONSULTANT under this AGREEMENT shall be paid directly by CONSULTANT.

Maximum Compensation

The maximum amount of compensation to be paid to CONSULTANT, including payment for both professional services and reimbursable expenses for the initial term of the AGREEMENT and the two one-year Option Periods (July 1, 2011 through June 30, 2015) shall not exceed One Million Forty Thousand Dollars (\$1,040,000).

RD:KWF:SBM
May 27, 2011

CITY shall compensate CONSULTANT only for work authorized and performed under each Service Order approved by DIRECTOR or DIRECTOR's designee.

EXHIBIT E
INSURANCE

CONSULTANT, at CONSULTANT'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by VENDOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

1. The coverage described in Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001 including products and completed operations; and
2. The coverage described in Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 "any auto", or Code 2 "owned autos" and Endorsement CA 0025. Coverage shall also include Code 8 "hired autos" and Code 9 "non-owned autos"; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.
4. Professional Liability Errors & Omissions.

B. Minimum Limits of Insurance

CONSULTANT shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors & Omissions \$1,000,000 Aggregate Limit.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officer, employees, agents and contractors; or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

a. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONSULTANT; products and completed operations of CONSULTANT; premises owned, leased or used by CONSULTANT; and automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.

b. CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of CONSULTANT's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by CONSULTANT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

d. Coverage shall state that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. **Verification of Coverage**

CONSULTANT shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

CITY OF SAN JOSE
Risk Manager
200 East Santa Clara Street, 2ND Floor Wing
San Jose, California 95113-1905

G. **Subcontractors**

CONSULTANT shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

RD:KWF:SBM
May 27, 2011

**EXHIBIT F
NOT USED**

EXHIBIT G

NOTICE OF EXERCISE OF OPTION
MASTER CONSULTANT AGREEMENT
BETWEEN

THE CITY OF SAN JOSE AND
JAMES T. BARNES, JR. DBA
BARNESTORMING ADVERTISING & MARKETING COMMUNICATIONS

WHEREAS, on _____ 2011, the CITY OF SAN JOSE ("CITY") and JAMES T. BARNES, JR. DBA BARNESTORMING ADVERTISING & MARKETING COMMUNICATIONS ("CONSULTANT") entered into a Master Agreement for Consultant Services ("AGREEMENT") which contains an option to extend the term for two (2) additional one-year periods ("Option Period"); and

WHEREAS, CITY has made the determination to extend the AGREEMENT for the (first/second) Option Period;

NOW THEREFORE,

CITY HEREBY EXERCISES, pursuant to Section 2 of the AGREEMENT, the first/second one-year option to extend the term of the AGREEMENT for the period _____ through _____. All of the terms and conditions of the AGREEMENT shall remain in full force and effect during the Option Period.

"CITY"

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal
corporation

KEVIN FISHER
Sr. Deputy City Attorney

By _____
Name: DEANNA J. SANTANA
Title: Deputy City Manager
Date:

EXHIBIT H

SPECIAL PROVISIONS

WARRANTY AND INDEMNITY

CONSULTANT represents and warrants to CITY that any visual media ("Media") prepared hereunder shall be CONSULTANT's original and unpublished composition and that the Media will contain no defamatory or unlawful matter and will in no way infringe upon or violate the copyright, trademark or proprietary rights of any person whomsoever. CONSULTANT agrees to indemnify and hold CITY harmless from any suit, demand, or claim made against CITY based on defamation or violation of copyright, trademark or proprietary infringement, and CONSULTANT further agrees to pay any judgment or reasonable settlement offer resulting from any such suit, demand, or claim, and to pay any reasonable attorneys' fees incurred by CITY in defending against such suit, demand, or claim.

GRANT OF PUBLISHING RIGHTS, COPYRIGHT AND TRADEMARK

CONSULTANT hereby grants to CITY and its successors and assigns the sole and exclusive right to copyright, trademark and publish any Media in the United States and Canada and other countries of the world. Any copyright or trademark shall be solely in the name of the CITY and the CITY shall remain the sole owner of such copyright or trademark. CONSULTANT hereby grants to CITY the right and power to apply in its name or otherwise for such copyright or trademark or renewal or extension thereof as the CITY may deem proper and all right, title, and interest in any such copyright or trademark, renewal, or extension shall vest exclusively in CITY and its successors and assigns.